

MANAGEMENT OF STATE FORESTS ACT

NO. 128 OF 1992
[ASSENTED TO 2 JULY, 1992]
[DATE OF COMMENCEMENT: 1 AUGUST, 1992]
(English text signed by the State President)
as amended by
General Law Third Amendment Act, No. 129 of 1993
[with effect from 1 September, 1993]
Forestry Laws Rationalisation and Amendment Act, No. 51 of 1994

ACT

To provide for the management of and control over State forests by a company to be established; and for matters connected therewith.

ARRANGEMENT OF SECTIONS

1. Definitions
2. Incorporation of public company
3. Objects of Company
4. Agreement regarding State forests
5. Staff
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1. Definitions.—

In this Act, unless the context otherwise indicates—

“Companies Act” means the Companies Act, 1973 (Act No. 61 of 1973);

“Company” means the company mentioned in section 2;

“Department” means the Department of Water Affairs and Forestry;

“Director-General” means the Director-General: Water Affairs and Forestry;

“Forest Act” means the Forest Act, 1984 (Act No. 122 of 1984);

“Minister” means the Minister of Water Affairs and Forestry except in section 5, where it means the functionary as referred to in the definition of “executing authority” in section 1 of the Public Service Act, 1994.

[Definition of “Minister” substituted by s. 80 of Act No. 129 of 1993 and by s. 8 of Act No. 51 of 1994.]

and any other word or expression to which a meaning has been assigned in the Forest Act bears the meaning so assigned thereto.

2. Incorporation of public company.—

(1) The Minister shall effect the incorporation in terms of the Companies Act of a public company, namely the “South African Forestry Company Limited”, and the issue to the Company of a certificate to commence business.

(2) Notwithstanding the provisions of the Companies Act the Minister shall sign the memorandum of association and articles of association of the proposed Company on behalf of the State.

(3) Notwithstanding the provisions of the Companies Act the Company shall have at incorporation not more than one member.

(4) The Minister shall take up shares in the Company so incorporated on behalf of the State, and then exercise the State’s rights as member and shareholder of the Company.

(5) The shares contemplated in subsection (4) shall only be sold or otherwise disposed of with the approval, by resolution, of Parliament.

(6) (a) No stamp duties in terms of the Stamp Duties Act, 1968 (Act No. 77 of 1968), shall be payable in respect of the issue of shares mentioned in subsection (4).

(b) No fee as contemplated in section 63 of the Companies Act or any other fee shall be payable to the registrar of companies in respect of the incorporation and the issue of a certificate to commence business in terms of subsection (1).

3. Objects of Company.—

The objects of the Company are the development in the long term of the forestry industry according to accepted commercial management practice.

4. Agreement regarding State forests.—

(1) The Minister may with the concurrence of the Ministers of State Expenditure, of Finance and of Public Works, as the case may be, by agreement entrust to the Company, on the conditions he deems fit, the management, control and operation of any State forest or any portion thereof which is utilized or which can be utilized as a whole or partially for commercial purposes, as well as any power conferred on the Director-General by any law.

(2) The agreement contemplated in subsection (1) may further comprise—

(a) the alienation to the Company of any assets of the State;

(b) the granting of any right of a temporary or permanent nature as contemplated in section 11 of the Forest Act;

(c) the establishment and operation of facilities for tourism and recreational purposes;

(d) the removal of forest produce for research purposes;

(e) the management, control and operation of an area for the conservation of fauna and flora;

(f) the continuation of the State's contractual obligations for the supply of forest produce;

(g) staff matters; or

(h) any other matter which the Minister considers expedient for the functioning of the

Company.

(3) As from the date of the said agreement—

(a) all liabilities, rights or obligations, whether contractually or otherwise obtained or accumulated by the State in connection with a matter entrusted to the Company by the said agreement, pass to the Company;

(b) any State forest of which the management, control and operation are entrusted to the Company in terms of subsection (1) is deemed to have been withdrawn from demarcation in accordance with the provisions of section 10 (2) of the Forest Act; and

(c) the provisions of sections 11 (2), 17 (4) and 74 (a) of the Forest Act shall no longer apply to a State forest the management, control and operation of which are entrusted to the Company in terms of subsection (1).

[Para. (c) added by s. 81 (a) of Act No. 129 of 1993.]

(4)

[Sub-s. (4) deleted by s. 81 (b) of Act No. 129 of 1993.]

Wording of Sections

(5) The operation of this Act does not grant the transfer of ownership of State land to the Company.

5. Staff.—

(1) The Minister may, subject to the provisions of the Public Service Act, 1984 (Act No. 111 of 1984), make the services of any person who is an officer or employee in terms of that Act, available to the Company.

(2) Should the Company offer an appointment to an officer or employee as contemplated in subsection (1) or to any other officer or employee as defined in the Public Service Act, 1984, approved by the Minister, such person shall on the acceptance thereof be appointed on the conditions determined by the Company and employed as so determined on the condition that—

(a) no person's salary or salary scale shall be reduced by such appointment;

(b) vacation leave, as well as all monetary benefits attached thereto, standing to a person's credit with the State, shall to the same extent stand to his credit with the Company;

(c) a less favourable retirement age than that which he had in the employ of the State shall not be granted to a person as a result of such appointment.

(3) (a) An officer or employee as contemplated in subsection (2) who is a member of the Government Service Pension Fund or the Temporary Employees Pension Fund administered by the Department of Finance and who is employed by the Company, shall before a date determined by the Minister, after consultation with the Company, exercise an option to—

(i) remain a member of such fund, and from the date of exercising such an option such an officer or employee shall, notwithstanding the provisions of any other law, be deemed to be a dormant member of the fund concerned as contemplated in section 15 of the General Pensions Act, 1979 (Act No. 29 of 1979), and become a member of an own pension fund as referred to in paragraph (b); or

(ii) become a member of an own pension fund as referred to in paragraph (b).

(b) The Company may, under the Pension Funds Act, 1956 (Act No. 24 of 1956), establish any pension fund or funds for its employees: Provided that the claim of an employee against such new pension fund on the date on which he becomes a member of the fund, shall not be smaller than the claim which such employee had on the said date in respect of service performed as a member of a pension fund administered by the Department of Finance of which he was a member on the date immediately preceding the date on which he joined the new pension fund.

(c) In the case where an employee applies for membership of, and his pension benefits are transferred to, a pension fund referred to in paragraph (b)—

(i) his membership of the pension fund from which his benefits are transferred shall terminate and he shall have no further claim against such pension fund;

(ii) the pension fund from which an employee's benefits are transferred shall pay to the pension fund of which he becomes a member, an amount equal to the financing percentage of the first-mentioned fund, multiplied by the actuarial liability of that fund in respect of such employee as on the date of the transfer, plus interest calculated at the bank rate from the date of the transfer to the date of payment thereof;

(iii) the pension fund from which an employee's benefits are transferred shall cede any claim which it may have against the employee to the pension fund of which he becomes a member; and

(iv) the State shall, in respect of that employee on his becoming a member of a pension fund referred to in paragraph (b) and established in terms of the Pension Funds Act, 1956, pay to such pension fund an amount equal to the difference between the actuarial liability of the pension fund from which the employee's benefits are transferred and the amount paid in terms of subparagraph (ii), plus interest calculated at the bank rate from the date of the transfer to the date of payment.

(d) The provisions of paragraph (c) shall mutatis mutandis apply if an employee who under paragraph (a) (i) elected to be a dormant member, at a later stage under section 15A of the General Pensions Act, 1979 (Act No. 29 of 1979), elects to have his accrued pension benefits transferred to another pension fund.

(e) For the purposes of this section—

(i) the actuarial liability of a pension fund in respect of a specific member or group of members of the fund, means the actuarial liability, as determined by an actuary instructed by the Minister of Finance, with regard to the said member or group of members of the fund;

(ii) the financing percentage of a pension fund means the market value of the assets of the fund expressed as a percentage of the total actuarial liability of the fund, after such assets and liabilities have been reduced by the amount of the liability of the fund towards all its pensioners, as determined at the time of the most recent actuarial assessment of the fund or any reappraisal thereof done on the instructions of the Minister of Finance; and

(iii) bank rate means the rate determined from time to time under section 10 (2) of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989).

(4) Pensionable service rendered or bought back by a person in the employ of the State is deemed to be pensionable service rendered by him in the employ of the Company.

(5) For the purposes of the provisions of the Income Tax Act, 1962 (Act No. 58 of 1962), no change of employer shall be deemed to have taken place when employment is taken up at the Company by officers and employees in terms of subsection (2), and the position of officers and employees in respect of the phasing-in of tax levied on benefits or advantages derived by reason of employment or the holding of any office as contemplated in Schedule 7 to the Income Tax Act, 1962, shall be deemed to remain unchanged.

(6) The Minister may delegate, on the conditions he deems fit, to an officer of the Department a power granted to him by this section.

6. Short title and commencement.—

This Act shall be called the Management of State Forests Act, 1992, and shall come into operation on a date determined by the State President by proclamation in the Gazette.